THE AMERICAN LAW REGISTER

FOUNDED 1852.

UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

VOL. { 50 O. S. / 41 N. S. } JULY, 1902. No. 7.

JUS GENTIUM AND LAW MERCHANT.

ADDRESS BEFORE THE PENNSYLVANIA BAR ASSOCIATION, JUNE 30, 1902, BY WILLIAM WIRT HOWE.

It is with real diffidence that I undertake to address this assembly. From my boyhood I have heard of the Pennsylvania lawyer in general, and the Philadelphia lawyer in particular, as an expert of remarkable learning and acuteness, and as a being not to be trifled with. And I am mindful also of a saying, which is appropriate to this scene and these surroundings, that "one of the dearest rights of the individual man is the right not to be bored." When, therefore, I propose to say something in the way of comparison concerning the development of the Jus Gentium of ancient days, on the one hand, and of the Law Merchant of modern times, on the other, I can only hope that the theme may not appear too academic or, in the language of Dr. Goldsmith's Traveler, too "remote, unfriended, melancholy, slow."

To begin such a comparison in the way of legal history, we may look back for a moment to those primitive times when what we call law was not the product of conscious and deliberate legislation, but was a growth of customs taking organic form in response to the demand of an archaic con-

dition. And we may perceive the tendency of such growth and organization to fall into two quite distinct divisions; the one concerning the primitive family, clan, tribe, and ancient city, the other concerning the affairs of trade and commerce. The former division included the customary law of Persons, in family, clan, tribe and city, and the law of Things or property in the same relations and jurisdiction. The latter included all the usages of trader, merchant and mariner. The former division was naturally narrow and inelastic; confined by the swaddling clothes not only of what was called law, but also of what was called religion. The latter division tended to freedom of intercourse at home and abroad; and to the promotion of rapid and informal dealings between man and man, without regard to the lines of family, race or nation.

This distinction between the two parallel streams of customary law was recognized from early days. The Hindu jurist, whoever he was, who is called Manu, said, perhaps three thousand years ago, that immemorial usage is transcendent law, and lays it down that a king, that is to say a royal judge, must inquire not only into the customs of families, classes and districts, but into those of traders.[1] And so we find in early Hindu law traces of an independent mercantile usage concerning partnership, carriers and shipping. So at an early time, we are told of glimpses in the Babylonian Talmud of a system of mutual marine insurance, probably on the Euphrates and the Persian Gulf, with rules in regard to deviation. When Abraham prepared to slay his son Isaac, he was probably proceeding as Agamemnon did with regard to Iphigeneia, under that early family law, that gave to the House Father the absolute power over his children, of life and death. But when he purchased the cave of Macpelah, he was acting, it would seem, on lines of commercial custom, for he paid, 400 shekels, "in money current with the merchant."[2] Egypt, Phœnicia and Carthage developed mercantile usages that no doubt influenced Greece. The keen and active Greek mind organized and extended these rules of commercial life, which, like

[1] J. D. Mayne, Hindu Law and Usage, 246.

[2] Genesis, 23, 16.

well-coined and standard gold and silver, would be accepted anywhere as of sterling worth. We find allusions in Greek literature to commercial agents or consuls in foreign parts, to loans on bottomry, to societies that may have been something like insurance companies, and to the general fact that mercantile pursuits were held very honorable.[3] The Rhodian law represented a truly cosmopolitan system of mercantile customs formed by the meeting in Rhodes of many currents of trade and commercial adventure, flowing from all parts of the known world. We are not sure as to how much of the "Rhodian law" has come down to us in authentic form; but we cannot doubt that there was such a system of usages of mariner and merchant, and that it was formed in the manner suggested. Bottomry, respondentia, salvage, general average, agency, and the like,—these are some of the many topics which we are justified in supposing to have been controlled by these customs. And the system was in no way derived from the primitive law of the family, clan, tribe and city,—nor from any decree of patriarch, king, senate or popular assembly. It flowed in parallel lines from another source, from the usages of commercial life.

We pass on to Rome. A few clans of shepherds and herdsmen, probably from the ridges of Alba Longa, settled on the banks of the Tiber. They builded wiser than they knew. If they had been merely shepherds and farmers, or even mere fighters, they might have gone the way of the Samnites. But the words that Camillus is reported to have used when he exhorted their descendants not to abandon the young city, that had just been ravaged by the Gauls, foretold a different destiny. "Not without reason," he said, "did gods and men select this site for the foundation of Rome,—healthful hills, a convenient river equally adapted to maritime and inland trade, the sea not too far off to prevent an active international commerce, nor so near as to expose the city to a sudden attack from foreign vessels; a site in the centre of the peninsula; a situation made, as it were, on purpose to allow the city to become the greatest in the world.[4]"

[3] Plutarch, "Solon."

[4] Livy, 5, 54.

So far Camillus. It was this situs, among other causes, that enabled the Alban shepherds to develop into the rulers of universal empire.

The beginnings of Roman law, like those of other Aryan peoples, are found in the religious and secular customs of family and clan. Here originated the sacred hearth, the communion of the common weal, the paternal power, the peculiar formalities of marriage, the rules of agnatic succession to the quasi-corporate family estate, the transfer by mancipation, with bronze and balance and witnesses; the ceremonious loan by nexum, and such like primitive ideas and methods—esteemed the sacred heritage and exclusive possession of the primitive Roman citizen. It was from these conceptions of the early customary law of family and clan that the Jus Civile was derived and developed,—a system with which the stranger, the alien, the foreigner, the sojourner, had in theory no concern, and in which he had no right. This Jus Civile was embodied in the Twelve Tables with such modifications as existed at the time of their adoption; and it may be said that, for a thousand years, the law of the Twelve Tables as explained and applied, was supposed to lie at the foundation of Roman law, and was spoken of in much the same manner that Blackstone speaks of the common law of England. But it had begun with the customary observances of the family, the gens, and the community. It was complicated with questions of religion, and was intended to regulate the relations of Roman citizens as such. Whatever rights it recognized were, in origin and, literally speaking, birthrights. The outlander could theoretically take nothing under this archaic system.

But Rome was founded not merely as a fortress, but as a commercial port. It was intended not merely for defence but for expansion, and for expansion not merely by conquest but by trade. At the first, the strangers who came thither for business purposes could have no share in the primitive Jus Civile. But such narrow restrictions could not resist the progress of events and ideas. Treaties were concluded with other commercial states, whose citizens were thus permitted to enjoy commercial rights in Rome, and could even perform some juristic acts peculiar to the primitive law, and

"recuperatores," who might be likened to arbitrators, were provided to determine their disputes.

But special provisions of this kind could not meet the demand for a recognition of those general rules of business life which must grow up with an increasing commercial civilization. The important movement that took place about the year 242 B. C. resulted in the appointment of a new magistrate, the Praetor Peregrinus, who was chosen as a special judge for foreigners; and so the Jus Gentium may be said to have taken its place definitively alongside of the primitive system.

It is hardly necessary to remind this learned assembly that the Jus Gentium did not signify what we call international law, which was styled Jus Fetiale, but simply referred to those general and convenient rules of life and of justice between man and man which were supposed to prevail among other civilized nations. Its increasing importance and its manifest reasonableness commended it to all men who could take an intelligent view of the past, and exercise a scientific imagination with regard to the future. Nor was it any fancied code of nature, such as an idealogist might dream out in his study; but it was a system of practical rules of conduct derived largely from the experience of an expanding commerce and conforming to that sense of justice, equity, and convenience which will generally be found among intelligent merchants. It, therefore, soon became the subject of Praetorian edicts and juristic interpretation, and thus became largely incorporated into what was known as the honorary law. It thus became wrought into the law of Rome, and in such a way as to justify the definition that the Jus Gentium was that part of the private law of Rome which was essentially in accordance with the private law of other nations, and more especially with that of the neighboring Greeks.

The influence of this system on the business life of Rome may be illustrated by a reference to certain contractual obligations. In early times there had been few contracts because few were needed, and the rules of status were the first concern of the law. And such contracts as there were are found to have been very formal and very dependent upon

the ties of religious reverence and social compulsion. They resembled treaties between family groups rather than agreements between individuals, and were dependent largely upon religious sanctions. Thus we are told of the early contract of Jusjurandum, a verbal declaration by solemn formula, whereby the promissor called on the gods to witness his good faith and to punish him if he should be faithless. So we read of the early contract of Sponsio, made at first by a solemn pouring out of wine, as well as by an oath, but finally developed into a sacramental form of words. Perhaps the custom has survived in the practice of the French peasants, who bind their bargains with a glass of wine. We find also the grave and technical formalities of the loan by Nexum and the sale by Mancipation. These, with some others, belonged to the Jus Civile. They were the birthright of the Roman citizen, and could not be availed of by the stranger and the foreigner.

But with the introduction of the Jus Gentium, coming as it did from civilizations really older and more advanced, we find a modification of the methods of making and enforcing contracts. The more rapid and flexible methods of mercantile life make their appearance. Sponsio becomes modified into stipulation, and the latter may be used by aliens. The ceremony called Vadimonium is slowly developed into something like what we know as suretyship, which was equally available. Consensual contracts are recognized and enforced, on the broad ground that they have been formed by the mere consent of the parties, which ought to be law as between obligor and obligee. Such are Emptio et Venditio,—the sale made without the formalism of the primitive times; Locatio et Conductio, the lending or hire of things, of personal services, or of certain work to be done; Societas or partnership, as applied to the activities of business life, whether in a general way or in some special venture; and finally Mandatum, whereby the doctrine of agency in Rome, if it never reached modern dimensions, was at least largely extended in matters of trade and commerce.

And referring to the doctrine of agency, two rules on this subject may be noticed as thus introduced, and which might be enforced by two Praetoriam actions. The one held the

ship owner or charterer responsible for the contracts of the ship master, and the liability was enforced by the actio exercitoria; the other was enforced by the actio institoria, by which a person who employed a manager for a business producing profits, was made liable on the contracts of such manager when entered into in virtue and for the purposes of his employment and within the scope of his authority.

In the introduction and development of the Jus Gentium, what have been called "real" contracts were either adopted or modified to suit the demands of a broadening commercial condition. They were not called "real" because they concerned what we call real estate, but because they implied an actual delivery of a specific thing as an essential of the obligation. Such were Mutuum, or the loan for consumption; Commodatum, or the loan for use; Depositum, or the placing of an object in the possession of another for safe-keeping; and Pignus, the contract of pledge developed and modified so as to become a basis of credit and a ground of useful action. It may also be claimed that the contract known as Expensilatic either came in with the Jus Gentium or was developed thereby, both as to form and enforcement, to meet the needs of business. It resulted from entries made in books of account, in such form and under such circumstances as to bind the debtor. The same may be said perhaps of the contracts called Chirographum,—an acknowledgment signed by the debtor,—and Syngrapha, signed by both creditor and debtor. Both of these, as their etymology implies, came from the Greek mercantile law, and may have been found of advantage in Roman trade.

We find also the contract called Constitutum, by which a debtor might acknowledge or renew his obligation, a form of agreement manifestly mercantile. And we notice also what was known as Receptum, equally commercial in character and use. The shipmaster, the innkeeper, and the keeper of a stable are each liable for property received in such capacity. So, too, the Receptum Argentariorum came to have an important part to play as commerce extended. When the banker, for example, received a sum of money from a customer, with the understanding and agreement that it should be paid to some third person, a creditor of

that customer, such an agreement gave rise to a legal obligation which might be enforced by the Actio Receptitia. As has been remarked by Mr. Buckler,[5] there was here an international method of assigning indebtedness, the former methods not being available to foreigners; and we may see in the Receptum Argentariorum in this aspect something like the acceptance of a bill of exchange.

Notice may also be taken of the development in Rome of Hypotheca, a form of security that probably came from, or at least through, Greece, as its name implies. It was in some way a security for debt, and in its early stages has been compared to a chattel mortgage. So far as it was used to secure the rent due by a tenant, it resembles the lessor's privilege or lien of the modern civil law. So far as it may have obtained in maritime matters, it resembles the admiralty lien. In later times it has separated into two branches, the privilege proper, which springs only from the nature of the debt, and the mortgage, which is created by agreement of the parties.

Gaius, a law professor of the second century, and one of the leading institutional writers of that period, states the condition of Roman law of his time as follows:

"All peoples governed by laws and customs make use, partly of their own, partly of law common to all men; for the law which each people has formed for itself is peculiar to that state, and is called Jus Civile, as the law peculiar to the state itself; but the law which natural reason has formed amongst all men is observed in like manner among all peoples, and is called Jus Gentium, as the law employed by all nations. The Roman people, accordingly, used not only their own, but also the law common to all men. From this Jus Gentium have almost all contracts been derived; for example, purchase and sale, hiring, partnership, deposit, loan, and many others."

As time went on, and from the fourth century of our era onward, the centre of gravity in legal as well as political matters shifted toward the Greek portion of the empire, and the spread of Greek philosophy became more

[5] Contract in Roman Law, p. 217.

and more influential in matters of law. The Roman franchise had been extended to the entire empire. The Jus Gentium had not only been incorporated into Roman law, but had largely superseded the Jus Civile.

"Roman law was finished; the local law of the city had passed into a law available for the world in general."[6]

From this time onward, it was only necessary to codify the completed system, and this was finally done by Justinian in the sixth century of our era, through the labors of Tribonian and his associates.

The Digest of Justinian, which is a kind of encyclopædia of law, made up of the writings of the classical jurists, is found to be largely a repertory of the Jus Gentium. Its principal contributors were of cosmopolitan culture. Julian, the compiler of the Perpetual Edict, was probably born in an African colony, and enjoyed a wide experience in the provinces. Africanus came from the same region. In the opinion of Professor Mommsen, Gaius was a law professor at Troas in the province of Asia. There are more than five hundred extracts from his works in the Digest. Ulpian, from whose writings more than twenty-five hundred texts are quoted, was a native of Tyre. Paul, whose contributions are nearly as large, was perhaps of Italian birth. Papinian, whom Cujas declares to have been the greatest lawyer that ever was or ever would be, and as pre-eminent among jurists as Homer among poets, was probably born in Syria. And as John Marshall was soldier, ambassador, legislator and cabinet officer, as well as lawyer and judge,—so, too, most of the leading Roman jurists took part in executive and administrative, as well as in judicial functions, in a world-wide empire.

We come now to the beginnings of that Lex Mercatoria, or Law Merchant, which forms so important a part of modern jurisprudence in England and in our own country.

The Western Roman empire went down in the fifth century, and no doubt there was much conflict at first in that period of war and invasion; but at the same time, in Western Europe, society and business found some *modus vivendi.*

[6] Sohm's Institutes, p. 78 to p. 82.

The Mediterranean and the Atlantic, the North Sea, the Baltic and the Rhine, might still be waterways, and the Roman roads highways of trade and commerce. The Teutonic invaders brought with them ideas of primitive law, such as were found in early times among their cousins of Greece and Rome; but naturally they knew little of mercantile law or usage. They had the good sense, however, to provide for their conquered subjects some epitomes of Roman law. In Italy, Theodoric the Great, king of the Ostrogoths, issued his Edict about the beginning of the sixth century, compiled largely from the Gregorian, Hermogenian and Theodosian Codes and the Opinions of the jurist Paul. Soon after, in the Visigothic kingdom, which included Southern Gaul and Northern Spain, the Breviary of Alaric II., drawn largely from the Theodosian Code, the Institutes of Gaius, and the Opinions of Paul, was promulgated, and remained as the corner-stone of fundamental law for many centuries. In Burgundy, the Lex Romana Burgundionum was set forth as a guide, at least for Romanized subjects; and so it may be said that something was even then rescued from the wreck of a stately jurisprudence, and used as a foundation for the modern structure. But neither these compilations nor the primitive customary law of the Teutonic invaders could suffice for all the needs of commerce. As time rolled on, the busy trader must have his own usages and customs by sea and land. And these usages and customs were formed and applied in the various cities that became the centres of mediæval trade. Whatever civilization there was, signified *ex vi termini*, the life of these cities. Amalfi, Pisa, Genoa, Venice, Marseilles, Barcelona, the cities of the Levant, and the Hanse Towns became emporia where commercial law was formed by a process, not of legislation, whether arbitrary or philosophic,—but of natural growth.

And in order that these usages might be harmonized and known, compilations of them began to be made. The Table of Amalfi was framed. We do not know precisely its contents or arrangement, but we may presume that in this Italian city, where the compilations of Justinian were still known, the leading principles of the Jus Gentium, as well as of contemporary custom, would, naturally, be preserved

and handed down. So of the Consolato del Mare, called by the Spanish El Consulado, we may believe that it was compiled by the Prohoms of Barcelona, and it has beyond doubt been a powerful factor in the formation of the modern Law Merchant. Mr. Kent says that the Consolato "is undoubtedly the most authentic and venerable monument extant of the commercial usages of the middle ages, and especially among the people who were concerned in the various branches of the Mediterranean trade. It was as comprehensive in its plan as it was liberal in its principles. It treated of maritime courts, of shipping, of the ownership and equipment of ships, of the duties and responsibilities of the owner and master, of freight and seamen's wages, of the duties and government of seamen, of ransoms, salvage, jettisons, and average contributions. It treated also of maritime captures, and of the mutual rights of neutral and belligerent vessels, and, in fact, it contained the rudiments of the law of prize. Emerigon very properly rebukes Hubner for the light and frivolous manner in which he speaks of the Consolato; and he says, in return, that its decisions are founded on the law of nations, and have united the suffrages of mankind."

The Laws of Oleron, an island on the western coast of France, formed another collection of usages of mariner and merchant; a work which has been ascribed to the time of Richard I., and of which some account is given in the admiralty case of The Dawn, 2 Ware, 126. To this may be added the Laws of Wisbuy, a town of Gothland, and the regulations of the Hanse Towns. Then came the revival of religious studies in the universities of Italy, France and England, with a profound investigation of the classical texts in the Institutes and Digest of Justinian, and finally, to crown the list, came the Ordinances of Louis XIV.

Nor should it be forgotten that another source of customary commercial law was found in the many fairs and markets of the middle ages, with their usages and jurisdiction.

We may come now to the development of the Law Merchant in England,—to the unfolding and growth of that system which has been inherited by us. Speaking broadly,

it may be seen at once that its evolution has been quite similar to that of the Jus Gentium in Rome. Looking at early England, we find something resembling the primitive law of Rome. Whether it comes from Celtic, Anglo-Saxon, Danish or Norman sources, it concerned family, succession, real estate, torts, crimes. It had little concern for the mariner and merchant. They were laying the foundation of England's commerce in their own way. Their trade was mostly with the continent and the Mediterranean, and they followed the usages of what was to them the commercial world. The legal principles that governed them were founded on the custom of merchants as among themselves. They felt that the same general rules of crystallized common sense and usage should prevail alike in London, Lübeck and Venice. Thus far, and speaking generally, the law merchant was distinct from the common law, parallel, and proceeding from a different source; and this may be said to be true to the time of Coke, down to which period it was special custom, recognized and administered in special tribunals, where the disputes of a special class were settled in view of peculiar duties and peculiar rights. After this time, and in what has been called its second stage, it was a body of customs, to be proved as a matter of fact, and binding only on mercantile persons. But from the time of Mansfield, whose career, as scholar, orator, statesman and lawyer, resembled that of a classical jurist of the time of the Antonines, it became a part of the general law of England in the same manner in which the Jus Gentium had been incorporated into the law of Rome. We all remember the case of Luke against Lyde, 2 Burrows, 882, 889, where this adoption of the Law Merchant was recognized by Lord Mansfield. It is manifest that, with the advent of that distinguished jurist, the hour and the man had met together. As pointed out by Lord Campbell, the general common law of England which Mansfield was to administer when he went upon the bench was a system not badly adapted to the condition of England in the Norman and early Plantagenet reigns, when land was almost the only property worth considering, and the rules in regard to land were those chiefly required by society. But in the reign of George II., England

had become one of the greatest manufacturing and commercial countries in the world; and yet her jurisprudence had by no means grown with that material growth. The Parliament had done little, if anything, to supply the defects of feudal law, and the Reports threw little light upon the many important questions growing out of a vast commerce. No convenient treatise had been published in England concerning these important topics, and Mansfield perceived the noble field that lay before him, and resolved to reap the rich harvest of glory which it presented. He had been a student, even at Oxford, of Roman law; he knew the origins of Scotch as well as English juridical systems, and he had been an eager reader of French jurisprudence, with its blending of Roman law and Teutonic customs. The celebrated Ordinance of the Marine of Louis XIV. was his special delight, and he was instrumental in introducing much of its ruling and spirit into the Law Merchant of England. The eulogy pronounced upon him by Mr. Justice Story is not exaggerated. He found the common law in a condition that resembled that of the Jus Civile of Rome in the third century before Christ. The ordinary lawyer and judge of the time did not perceive that the Common Law, as it was called, was no longer adequate to the situation; but Mansfield, with his brilliant intellect and wide learning, saw what was needed and supplied the want. He justly deserved the praise bestowed by Mr. Justice Buller in his opinion in the case of Lickbarrow against Mason,[7] where it was said substantially:

"Within these thirty years the commercial law of this country has taken a very different turn from what it did before. Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find that, in courts of law, all the evidence in mercantile cases was thrown together. They were left generally to a jury, and they produced no general principle. From that time, we all know, the great study has been to find some certain general principle, which shall be known to all mankind, not only to rule the particular case then under consideration,

[7] 2 Term Rep., 63.

but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the understanding. And I should be very sorry to find myself under a necessity of differing from any case upon this subject which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country."

It may be safely said that, from the time of Lord Mansfield, the Law Merchant has been a part of the general law of England, and so, by descent, of America. Even in Louisiana, where we have never adopted a code of commerce like that of France or Spain, we follow the general rules of the mercantile law of England and of the other states of our Union, and so our Supreme Court declared many years ago.[8]

As the introduction, adaptation, and application of the Jus Gentium were largely the work of the jurisconsults of Rome, so we are indebted to the jurists of modern times for much that is orderly and enlightened in our Law Merchant. We recall at once in this connection such names as Azuni, Emerigon, Bynkershoeck, Cleirac, Valin and Pothier on the continent, Abbott in England, Hamilton, Kent and Story in America. And it may be added that the reports of your own state may be usefully consulted on this subject, and are very instructive, both in the briefs of counsel and in the opinions of the court. In the same way, the reports of the Supreme Court of the United States are naturally of great value, and exhibit a constant progress of doctrine.

If I am not mistaken in my appreciation of the foregoing facts, there is an interesting resemblance between the development and incorporation of the Jus Gentium in Roman law and of the Law Merchant in the municipal law of England and America. But you have a right to ask the familiar American question, "Cui bono?" How do all these things concern a bar association? Are you to be among those "impracticable pedants who live only in the past?" Is there anything up to date in this subject, and does it concern the future of our profession?

[8] *McDonald* v. *Millaudon*, 6 La. 408 (1833).

Such questions, if haply they occur to you, are natural enough. The answer, I venture to suggest, is found in one of the leading purposes of bar associations, whether state or national, and that is the study of legal history and comparative jurisprudence, to the end that we may, in the first place, better know our own laws, and in the second place that we may improve them by further useful legislation. For, as John Henry Newman said in his essay on the Idea of a University, "We need to take connected views of new and old, and of their relations one to another. In no other way can acquirement become philosophy." And as the late Dr. Stubbs has told us, in the preface to his work on the English Constitution, we must appreciate that continuity of life, the realization of which is necessary to give the student a personal hold on the past and a right judgment of the present. What we are and what we possess, in any high sense, we derive from the past, in order that we may apply it to the work of the present and the development of the future.

Some events that have taken place in recent years are interesting in this connection. One is the promulgation of codes in the German empire. Mr. Rudolph Sohm, one of the compilers of the German Civil Code of 1900, writing in regard to its spirit and meaning, which have been somewhat modified to meet the requirements of the present day, inquires, "To whom may this modern spirit be traced? And to whom the spirit of our new civil law attributed? To none other than the merchant. It was among the commercial element of the cities that the power arose which eventually crushed the spirit of feudalism. Similarly, the merchant may not inaptly be called the father of the Civil Code of Germany."

Another event that may be referred to is the recent acquisition of our insular possessions,—and the fact that, in Porto Rico and the Philippines, as well as in Cuba, we find a very modern and scientific body of codified private law in civil matters, tracing its legitimate pedigree to the Breviary of Alaric II., the Fuero Juzgo, the Consolato, the Partidas of Alphonso the Learned, the Recopilaciones, and the Spanish Code of Commerce of 1829. A new code of

commerce was framed and promulgated in 1885, and extended to Porto Rico and Cuba in 1886 and to the Philippines in 1888. Whatever may be thought of Spanish politics or military methods, no one has ever doubted the intelligence and honor of the Spanish merchant and the learning of the Spanish jurists. Such lawyers as Mr. Rios and Mr. Alonzo Martinez stand in the front rank of their profession. The Codigo de Commercio of 1885 is most interesting and valuable. It is divided into four books. The first treats of merchants and commerce in general, of commercial contracts and commercial agents. The second book discusses the subject of commercial associations, whether partnerships, corporations, banks, railroad companies and other companies for public works, maritime associations and banks; agents and factors, loans, purchase, sale, and exchange, insurance, guaranties, bills and notes, and letters of credit. The third book treats of maritime commerce, ownership of vessels and the duties of their officers; charter parties, bills of lading, bottomry and respondentia, marine insurance, average and collision. The fourth book lays down the rules in regard to suspension of payment, bankruptcy, and prescription or limitations. Those who do not wish to read the work in the original will find a translation made for our War Department and published in the year 1899. We have acquired a good many islands from Spain, and it is possible that we may also acquire a good many valuable juristic ideas.

In the same connection, we may note the work of the International Law Association, which held its twentieth meeting last summer at Glasgow. Its honorary president is Lord Chief Justice Alverstone, its active president the Right Honorable J. B. Balfour, lord president of the Court of Session of Scotland, and its list of vice-presidents and executive council includes prominent names from the leading nations of Europe, from the United States, Mexico, and South America, and from Japan and China. International law is one of its topics of study and debate, but the Lex Mercatoria has a large place in its field of practical work. Its effort is to promote uniformity, growth, and improvement in the Law Merchant of the world, and there

seems to be no doubt of the value of its very intelligent efforts. In the report of the meeting at Glasgow in August, 1901, we find not only papers and discussions concerning international arbitration, neutral states, foreign judgments, and the like, but also concerning marine insurance, salvage, average, and other kindred topics. Such an association, such a meeting, such learned discussion, cannot fail to be productive of much good. We live in an age of legislation, properly so-called,—the conscious and deliberate action of law-givers, who represent more or less perfectly the experience, the desires, the hopes of their constituents. The civilized world is becoming more and more a federation of intelligent people working for practical improvement; and it seems reasonably certain that one of the most important ideals set before us, to which all bar associations should strive to attain, is uniform legislation on the leading topics of the Law Merchant.

The Hamburg Conference of 1902 concerning international maritime commerce also indicates the important movements that are going on in this direction.

We may also refer to the work of the Commissioners on Uniform Legislation, appointed from time to time in recent years by the governors of some thirty-three of our states, and meeting and conferring annually with the committee on the same subject of the American Bar Association. The law they have framed on the subject of negotiable instruments, formulated in view of similar legislation in England, is a monument of industry and skill. The general law of commercial paper, as we know, grew up centuries ago as a custom of merchants, and the object of the statute in question is to codify this law and to settle some disputed points. The statute thus framed has been adopted in some twenty-one states and territories and by Congress for the District of Columbia. It has, I believe, become the law of Pennsylvania, and it may be hoped that it will soon be adopted throughout our entire country.

We should not forget also the rapid development of jurisprudence and statutory law in Japan, in which her very acute statesmen have studied and adopted many important theories from continental Europe. They have resorted to

the French Civil Code, for example, as a fountain of principle, thus seeking in the law of other nations for enlightenment as to their own needs. That bright and active people have borrowed many ideas in the past from America; perhaps we may have occasion to borrow some ideas of law and administration from them in the great task set before us in the islands of the East.

"The note of the present day is expansion." I do not refer to what is merely territorial or political. We are not here to discuss political issues. I refer to expansion of all kinds, material, intellectual, spiritual. The movement of things is world-wide. It is not, as people sometimes say, that the world is growing smaller, but that our ideas and our interests are growing larger. In all matters there seems to be a kind of wireless telegraphy, by which those men who are properly attuned may catch messages from all the earth. It was long ago that Sir Matthew Hale declared:

"He that thinks that a state can be exactly steered by the same laws in every kind as it was two or three hundred years ago, may as well imagine that the clothes that fitted him when a child should serve him when he was a grown man. The matter changeth, the custom, the contracts, the commerce, the dispositions, educations, and tempers of men and societies, change in a long tract of time, and so must their laws in some measure be changed, or they will not be useful for their state and condition; and besides all this, time is the wisest thing under heaven. Those very laws that at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, secure new advantages and discoveries by time and experience, so much more do laws which concern the manners and customs of men."

Our editorial friends may decry "commercialism" with ample rhetoric, good or bad, but they cannot by the use of a stock phrase ignore the fact that honorable and intelligent commerce is one of the chief factors in advancing civilization.

It is not without some subtle significance that the lofty statue of Liberty Enlightening the World has been erected

in the Bay of New York. It does not stand in any remote and provincial place; it looks down on a highway of the nations where ships from all the oceans come and go; and, like the Colossus of Rhodes, it bears aloft a beacon light for all the known world. It is a type of that rational freedom which has outgrown the archaic restrictions of primitive life, and embraces the whole earth in the family ties of a cosmopolitan commerce. And it may remind us that our mercantile law is not for this or that narrow province, but should continue growing and expanding until the dream of Cicero may be realized, and there shall not be one law for Athens and another for Rome, one here and another yonder; but that, in those matters which concern the social interest of all men, the dictates of reason and good sense, formulated into convenient rules, shall be substantially the same throughout the entire world of commercial intercourse, and prevail victoriously among all people and for all time.

William Wirt Howe.